

**63B-1b-101. Title.**

This chapter is known as the "State Financing Consolidation Act."

Renumbered and Amended by Chapter 382, 2008 General Session

**63B-1b-102. Definitions.**

As used in this chapter:

(1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness representing loans or grants made by an authorizing agency.

(2) "Authorized official" means the state treasurer or other person authorized by a bond document to perform the required action.

(3) "Authorizing agency" means the board, person, or unit with legal responsibility for administering and managing revolving loan funds.

(4) "Bond document" means:

(a) a resolution of the commission; or

(b) an indenture or other similar document authorized by the commission that authorizes and secures outstanding revenue bonds from time to time.

(5) "Commission" means the State Bonding Commission, created in Section 63B-1-201.

(6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.

(7) "Revolving Loan Funds" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(h) the Permanent Community Impact Fund, created in Section 35A-8-303;

(i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409; and

(j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

Amended by Chapter 227, 2014 General Session

**63B-1b-103. Limitation on issuance of bonds -- Legislative approval required.**

No bonds may be authorized or issued under this chapter without the prior approval of the Legislature.

Enacted by Chapter 251, 2011 General Session

**63B-1b-201. Investment officer -- Powers and duties.**

(1) There is created within the Office of the State Treasurer an investment banking officer to advise, counsel, and render technical assistance to authorizing agencies in the management of state loan and grant programs.

(2) This officer shall:

(a) work cooperatively with the staff and boards of authorizing agencies as an advisor on technical financial aspects concerning loan and grant programs authorized by law;

(b) coordinate procedures for the closing of and assist authorizing agencies in closing all loans and grants of funds or other subsidy agreements;

(c) analyze, in conjunction with the appropriate authorizing agency, the financial feasibility and economic and capital efficiency of projects of applicants to authorizing agencies for loans and grants, review financing options, and make recommendations to each authorizing agency regarding terms of loans or grants and levels of state subsidy in accordance with the financial feasibility of the project and the efficiency of available state capital;

(d) coordinate and consolidate, to the extent possible, all financial and legal analysis of financing plans and closings of loans and grants made by each authorizing agency; and

(e) provide an annual report of the officer's activities to the state treasurer, the governor, the Division of Finance, and the boards of each authorizing agency.

(3) The analysis under Subsection (2)(c) shall include consideration of the following criteria:

(a) a demonstration of need based on the applicant's overall financial profile, including overlapping debt, tax levies, user rates, fees, charges, assessments, and other revenue and obligations existing within the community as a whole;

(b) the ability of the applicant to obtain financing from other, preferably private, sources on terms and conditions reasonably affordable;

(c) the availability and advisability of financing methods such as loans, grants, interest buy down arrangements, bond insurance, loan or bond guarantees, or any other appropriate method;

(d) the economic and efficiency of capital advantages enuring to the authorizing agency if the financing plan is adopted;

(e) a demonstration of local public support for the financing plan; and

(f) availability of other funds and financing methods under law.

(4) Each authorizing agency shall consult with and cooperate with the officer and shall consider the officer's recommendations before proceeding to fund a project, but the final decision as to the appropriate financing plan shall rest with the board of the authorizing agency according to their legal authority existing at the time.

Renumbered and Amended by Chapter 382, 2008 General Session

**63B-1b-202. Custodial officer -- Powers and duties.**

(1) (a) There is created within the Division of Finance an officer responsible for the care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

(i) owned or administered by the state or any of its agencies; and

(ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) Notwithstanding Subsection (1)(a), the officer described in Subsection (1)(a) is not responsible for the care, custody, safekeeping, collection, and accounting of a bond, note, contract, trust document, or other evidence of indebtedness relating to the:

(i) Agriculture Resource Development Fund, created in Section 4-18-106;

(ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(iii) Petroleum Storage Tank Trust Fund, created in Section 19-6-409;

(iv) Olene Walker Housing Loan Fund, created in Section 35A-8-502; and

(v) Brownfields Fund, created in Section 19-8-120.

(2) (a) Each authorizing agency shall deliver to this officer for the officer's care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

(i) owned or administered by the state or any of its agencies; and

(ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to the officer under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section 63B-1b-201 shall deliver to the officer described in Subsection (1)(a) for the care, custody, safekeeping, collection, and accounting by the officer described in Subsection (1)(a) of all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63B-1b-201(2)(b).

Amended by Chapter 203, 2014 General Session

Amended by Chapter 227, 2014 General Session

**63B-1b-301. State treasurer may sell, assign, or liquidate agency bonds -- Marketing plan required.**

(1) One or more authorizing agencies may from time to time request the state treasurer to sell, assign, or liquidate agency bonds on behalf of the authorizing agencies as provided in Section 63B-1b-302.

(2) (a) Agency bonds shall be sold, assigned, transferred, or liquidated by the state treasurer pursuant to a marketing plan provided by the state treasurer under Section 63B-1b-302.

(b) The governor or the governor's designee and the appropriate authorizing agency shall approve the marketing plan, in writing.

Renumbered and Amended by Chapter 382, 2008 General Session

**63B-1b-302. Marketing plan and related agreements -- Use of proceeds of liquidation of agency bonds -- Report to Division of Finance -- Special funds -- Limitation on liability.**

(1) (a) Before the liquidation of any agency bonds pursuant to the request of an

authorizing agency as provided in Section 63B-1b-301, the state treasurer shall provide a written marketing plan to the governor or the governor's designee and the appropriate authorizing agency or agencies for written approval.

(b) The marketing plan may provide for:

(i) the terms and conditions under which the agency bonds may be sold, assigned, or liquidated by the state treasurer;

(ii) the particular agency bonds to be sold, assigned, or liquidated, or a maximum par amount of agency bonds to be sold, assigned, or liquidated;

(iii) the price or a range of prices of the agency bonds to be sold, assigned, or liquidated, which may be at, above, or below par, as the state treasurer determines in the marketing plan;

(iv) the terms and conditions of agreements entered into by the state treasurer on behalf of the state with financial and other institutions for financial advisory services, trustee services, insurance, letters of credit, reimbursement agreements, tender agreements, put agreements, repurchase agreements, and indexing and tender agent agreements to facilitate the marketing plan or to secure or provide liquidity to support any agreement, obligation, or contract entered into by the state treasurer on behalf of the state in connection with the sale, assignment, or liquidation of the agency bonds and any repurchase, remarketing, or other liquidation of the agency bonds and any insurance, repurchase, remarketing, tender, put, letter of credit, or agreement, obligation, or contract entered in connection with them, including payment of fees, charges, or other amounts coming due under agreements entered into with financial or other institutions by the state treasurer, from the proceeds of any sale, assignment, or other liquidation of agency bonds, and from any investment earnings on such proceeds, and no other state money may be used for this purpose;

(v) the application of the proceeds received from the sale, assignment, or liquidation of agency bonds, and any investment earnings on them; and

(vi) all other details relating to the sale, assignment, or liquidation of agency bonds and any related, attached, or accompanying insurance, tender, put, repurchase, remarketing, letter of credit, or other agreement, obligation, or contract deemed necessary or appropriate by the state treasurer.

(c) The state treasurer, on behalf of the state, may enter into the agreements contemplated in the marketing plan.

(2) (a) After the payment of, or provision for payment of, the fees, charges, or other amounts pursuant to Subsection (1), the state treasurer shall deliver the proceeds of the sale, assignment, or other liquidation of agency bonds under this section to the appropriate authorizing agency to be applied as authorized by the law creating or authorizing the loan or grant program of the authorizing agency.

(b) (i) The marketing plan may provide that if any agreement, obligation, or contract entered into by the state treasurer on behalf of the state with respect to the sale, repurchase, remarketing, tender, put, assignment, or other liquidation of the agency bonds remains outstanding under the marketing plan, the proceeds, and investment earnings on them, may be pledged, escrowed, held in trust, or otherwise held in reserve by the state treasurer to secure these agreements, obligations, or contracts of the state treasurer entered into on behalf of the state.

(ii) Any obligations of the state treasurer entered into on behalf of the state

under Subsection (2)(b)(i) shall be limited solely to those proceeds and the investment earnings on them.

(c) No holder or beneficiary of any put, tender, repurchase, remarketing, or other similar rights under such agreements, obligations, or contracts of the state treasurer entered into on behalf of the state has any rights against the state, the state treasurer or any state agency, or funds of the state, the state treasurer, or any state agency, other than those expressly set forth in the agreement or contract embodying those rights, consistent with the marketing plan and the limitation set forth in this Subsection (2).

(3) (a) (i) The state treasurer may establish more than one marketing plan under this section.

(ii) Agency bonds may be combined in any combination and sold, pledged, assigned, or otherwise liquidated in any amounts, at any time, and from time to time as provided in the applicable marketing plan.

(b) The state treasurer may, by order, set forth the sale price, form, manner of execution, payment, manner of sale, assignment, or other liquidation, and all details of agreements or contracts entered into in connection with them, including the application of any proceeds and the investment earnings on them, consistent with the marketing plan and this section.

(c) The state treasurer shall make a verified return to the Division of Finance immediately upon completion of each transaction of:

(i) the amount of agency bonds involved;  
(ii) the amounts received in each transaction entered into under this section; and  
(iii) a brief description of any pledge or other restriction on the proceeds of the transaction or the investment earnings on the proceeds.

(4) The state treasurer may:

(a) create any funds necessary to carry out the purposes of this section;  
(b) invest all money held in those funds in accordance with Title 51, Chapter 7, State Money Management Act, and in accordance with any agreement of the state, pursuant to the marketing plan, with respect to the investment and application of the money; and

(c) invest money held in the funds in obligations of any state, territory, or possession of the United States, or of any of the political subdivisions of any state, territory, or possession of the United States, or of the District of Columbia, described in Section 103, Internal Revenue Code of 1986.

(5) The limitations contained in this section with respect to the liability of the state or its agencies may not be construed to limit or alter the obligations of political subdivisions on the bonds in the hands of the holders of them in any manner.

Renumbered and Amended by Chapter 382, 2008 General Session

**63B-1b-401. Pledge of agency bonds to pay revenue bonds -- Contents of financing agreements -- Use of money received by authorizing agencies.**

(1) Subject to the requirements of this chapter, and with the approval of the relevant authorizing agency, the State Bonding Commission may pledge, assign, or otherwise transfer any agency bonds, any money payable on or with respect to them,

any legally available money or other security administered by an authorizing agency, or any combination of bonds, money, or other security to provide for the payment of revenue bonds issued under Section 63B-1b-402 and the payment of any amounts due under agreements and contracts described in Subsection 63B-1b-402(9).

(2) (a) Before issuing revenue bonds under Section 63B-1b-402, the commission shall enter into a financing agreement with the appropriate authorizing agency or agencies.

(b) This agreement shall specify:

(i) any agency bonds, money, or other security to be pledged by the commission to provide for the payment of the revenue bonds;

(ii) the amount to be paid to the order of the authorizing agency or agencies for the agency bonds, money, or other security; and

(iii) other matters that the commission considers necessary or appropriate.

(3) The amounts received by each authorizing agency from the proceeds of the revenue bonds, together with all amounts paid to the authorizing agencies pursuant to Subsection 63B-1b-402(10), shall be applied by the authorizing agency as authorized by the law creating or authorizing the loan or grant program of the authorizing agency.

Amended by Chapter 251, 2011 General Session

**63B-1b-402. Commission may authorize revenue bonds -- Contents of bond document -- Special and reserve funds -- Limitation on liability -- Restoration of money in reserve funds -- Payment of bonds and other technical requirements -- Refunding -- Report to Division of Finance.**

(1) (a) In order to provide authorizing agencies with an alternative method of liquidating agency bonds and with additional funds to further the purposes of the authorizing agencies, the commission may authorize the state to issue revenue bonds subject to the requirements of this chapter.

(b) The revenue bonds shall be payable solely from a special fund established by the state treasurer as provided in Subsection (4).

(c) Revenue bonds may be sold at public or private sale and may be issued in one or more series.

(2) Revenue bonds may be authorized, issued, and sold by the commission on behalf of the state at a time or times and in a manner set forth in a bond document that provides for:

(a) the terms and conditions of sale, including price, whether at, below or above face value;

(b) interest rates, including a variable rate;

(c) authorized denomination;

(d) maturity dates;

(e) form;

(f) manner of execution;

(g) manner of authentication;

(h) place and medium of payment;

(i) redemption terms;

(j) authorized signatures of public officials; and

(k) other provisions and details considered necessary or appropriate.

(3) To the extent set forth in the resolution, the proceeds of revenue bonds may be used for the purposes set forth in Subsection (1) and to:

(a) provide for any necessary or desirable reserve fund as provided for in Subsection (5); and

(b) pay fees, charges, and other amounts related to the issuance and sale of the revenue bonds.

(4) (a) As provided in the bond document, the principal of, premium, if any, and interest on, any issue of revenue bonds is payable solely from and secured by one or more special funds consisting of:

(i) the pledge and assignment of any agency bonds, including all amounts payable on or with respect to them, and other money and security, as provided for in an agreement entered into under Subsection 63B-1b-401(2);

(ii) amounts on deposit in the reserve fund, if any, established under Subsection (5);

(iii) amounts available pursuant to any security device or credit enhancement device that the commission authorizes for the purpose of improving the marketability of the revenue bonds; and

(iv) other amounts available and pledged by the commission to secure payment of that issue of revenue bonds.

(b) Owners of revenue bonds do not have recourse against the general funds or general credit of the state or its political subdivisions or agencies, but this limitation does not limit or alter the obligations of political subdivisions on agency bonds in any manner.

(c) Revenue bonds do not constitute nor give rise to a general obligation or liability of, or constitute a charge or lien against, the general credit or taxing power of the state or its political subdivisions or agencies, including any authorizing agency.

(d) Revenue bonds shall contain on their face a statement that:

(i) the revenue bonds are payable solely from the sources set forth in this Subsection (4) and specified in the bond document with respect to the revenue bonds;

(ii) neither the state nor any political subdivision of the state is obligated to pay the revenue bonds; and

(iii) neither the faith and credit nor the taxing power of the state or any of its political subdivisions is pledged to the payment of principal or redemption price of, or premium, if any, or interest on the revenue bonds.

(e) Revenue bonds do not constitute debt of the state within the meaning of Utah Constitution Article XIII, Sec. 5 (3) or Article XIV, Sec. 1.

(5) (a) The commission may establish a reserve fund with respect to any issue of revenue bonds.

(b) If a reserve fund is established, the bond document relating to that issue of revenue bonds shall specify:

(i) the minimum amount that is required to be on deposit in the reserve fund;

(ii) the amount of sale proceeds from the sale of that issue of revenue bonds that shall be deposited in the reserve fund; and

(iii) the manner in which any deficiency in the reserve fund shall be replenished.

(c) (i) On or before the first day of December of each year, the state treasurer

shall certify to the governor and the director of the Division of Finance the amount, if any, that may be required to restore all reserve funds established to the minimum amount specified by the state treasurer with respect to each reserve fund.

(ii) The governor may request an appropriation from the Legislature equal to the certified amount in order to restore each reserve fund to the specified minimum amount.

(6) (a) (i) The commission may provide in the bond document that any signature of a public official authorized to sign revenue bonds may be by the facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

(ii) If all signatures of public officials on the revenue bonds are facsimile signatures, the bond document shall provide for a manual authenticating signature on the revenue bonds by or on behalf of a designated authenticating agent.

(iii) If an official ceases to hold office before delivery of the revenue bonds signed by that official, the signature or facsimile signature of the official is valid and sufficient for all purposes.

(b) A facsimile of the seal of the state may be imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

(7) (a) The commission may provide in the bond document for the replacement of lost, destroyed, stolen, or mutilated revenue bonds or for the exchange of revenue bonds after issuance for revenue bonds of smaller or larger denominations.

(b) Revenue bonds in changed denominations shall:

(i) be exchanged for the original revenue bonds in the aggregate principal amounts and in a manner that prevents the duplication of interest; and

(ii) bear interest at the same rate, be of the same series, mature on the same date, and be as nearly as practicable in the same form as the original revenue bonds.

(8) (a) (i) Revenue bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(ii) The commission may provide for the services and payment for the services of one or more financial institutions, other entities or persons, or nominees, within or outside the state, for:

(A) authentication;

(B) registration;

(C) transfer, including record, bookkeeping, or book entry functions;

(D) exchange; and

(E) payment.

(b) The records of ownership, registration, transfer, and exchange of the revenue bonds, and of persons to whom payment with respect to them is made, are classified as private or protected as defined in Title 63G, Chapter 2, Government Records Access and Management Act.

(c) The revenue bonds and any evidences of participation interests in the revenue bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 (a), Internal Revenue



Code of 1986, or any comparable predecessor or successor provision, and applicable regulations.

(9) (a) The commission may authorize the execution and delivery of whatever agreements and contracts that the commission considers necessary and appropriate in connection with the issuance of revenue bonds.

(b) These agreements and contracts may include agreements and contracts with financial and other institutions for financial advisory services, trustee services, insurance, letters of credit, reimbursement agreements, tender agreements, put agreements, repurchase agreements, and indexing and tender agent agreements to:

- (i) facilitate the sale of the revenue bonds; or
- (ii) secure or provide liquidity to support any agreement, obligation, or contract entered into by an authorized officer on behalf of the state in connection with:
  - (A) the issuance and sale of the revenue bonds;
  - (B) any repurchase, remarketing, or other pledge of the revenue bonds; and
  - (C) any insurance, repurchase, remarketing, tender, put, letter of credit, or agreement, obligation, or contract entered into in connection with them, including payment of fees, charges, or other amounts coming due under agreements entered into with financial or other institutions on behalf of the state.

(10) When all revenue bonds of an issue have been paid, or provision for their payment has been made, the following shall be transferred to the appropriate authorizing agency or agencies, in the amounts and in the manner that the commission considers fair and equitable, and to the extent not required to secure payment of the revenue bonds and related fees, charges, and other amounts:

- (a) all amounts remaining on deposit in any reserve fund established with respect to the issue of revenue bonds; and
- (b) all other amounts and all agency bonds held by the commission and any trustee and pledged to the payment of the revenue bonds.

(11) (a) The state treasurer or the commission may create any funds and accounts necessary to carry out the purposes of this section.

(b) (i) The state treasurer shall administer and maintain those funds and accounts.

(ii) The state treasurer may invest all money held in those funds and accounts in accordance with Title 51, Chapter 7, State Money Management Act, and in accordance with the bond document or any other agreement entered into on behalf of the state as authorized by the bond document.

(iii) The commission may not approve the bond document or other agreement with respect to the investment and application of the money unless the state treasurer has affirmatively approved any investment provisions contained in the bond document or other agreement.

(c) All income from the money invested in a fund or account created under this Subsection (11) shall accrue to the benefit of the fund or account and shall be used for the purpose for which the fund or account was established.

(12) The commission may authorize the issuance of refunding revenue bonds of the state in accordance with Title 11, Chapter 27, Utah Refunding Bond Act, for the purpose of refunding any revenue bonds and for the purposes of that act, the state shall be considered a "public body" and the commission its "governing body."

(13) (a) Revenue bonds may not be issued under this chapter until an authorized official finds and certifies that all conditions precedent to the issuance of the revenue bond, including the requirements of Section 63B-1b-103, have been satisfied.

(b) A recital on any revenue bond of a finding and certification conclusively establishes the completion and satisfaction of all conditions required in this section.

(14) Revenue bonds, interest paid on revenue bonds, and any income from revenue bonds are not taxable within this state for any purpose, except for the corporate franchise tax.

(15) (a) Revenue bonds are legal investments for all state trust funds, insurance companies, banks, trust companies, and the State School Fund.

(b) Revenue bonds may also be used as collateral to secure legal obligations.

(16) Immediately upon the issuance of each issue of revenue bonds, an authorized official shall make a verified return to the Division of Finance of:

(a) the aggregate principal amount of revenue bonds issued;

(b) the amount of proceeds of sale of revenue bonds received by the state;

(c) the amount paid to the authorizing agency or agencies for the agency bonds;

(d) the total amount of all fees and expenses relating to the issuance of the revenue bonds;

(e) the amount of sale proceeds of the revenue bonds used to pay fees and expenses; and

(f) the amount of sale proceeds of the revenue bonds deposited in the reserve fund established with respect to the issue of revenue bonds, if any.

Amended by Chapter 251, 2011 General Session

Amended by Chapter 342, 2011 General Session

#### **63B-1b-501. Tax status -- Exemption.**

The revenue bonds issued under this chapter, any interest paid on the revenue bonds, and any income from the bonds is not taxable in Utah for any purpose, except for the corporate franchise tax.

Renumbered and Amended by Chapter 382, 2008 General Session

#### **63B-1b-601. Publication of resolution or notice -- Limitation on actions to contest legality.**

(1) The commission may either:

(a) publish once in a newspaper having general circulation in Utah any resolution adopted by it; or

(b) in lieu of publishing the entire resolution, publish a notice of revenue bonds to be issued, titled as such, containing:

(i) the purpose of the revenue bond issue;

(ii) the maximum principal amount that may be issued;

(iii) the maximum number of years over which the revenue bonds may mature;

(iv) the maximum interest rate that the revenue bonds may bear, if any;

(v) the maximum discount from par, expressed as a percentage of principal amount, at which the revenue bonds may be sold; and

(vi) a statement that a copy of the resolution or other bond document may be examined at the office of the state treasurer during regular business hours for at least 30 days after the publication of the notice.

(2) For 30 days after the date of publication, any interested person may contest:

(a) the legality of the resolution or other bond document;

(b) any of the revenue bonds authorized under it; or

(c) any of the provisions made for the repayment of the revenue bonds.

(3) After 30 days, a person may not, for any cause, contest:

(a) the legality of the resolution or other bond document;

(b) any of the revenue bonds authorized under the resolution or other bond document; or

(c) any of the provisions made for the security and repayment of the revenue bonds.

Renumbered and Amended by Chapter 382, 2008 General Session

**63B-1b-701. Payment of expenses.**

(1) All expenses incurred by the state under this chapter may be paid:

(a) in the case of expenses incurred under Section 63B-1b-302, from the proceeds of the liquidation of agency bonds; and

(b) in the case of expenses incurred under Section 63B-1b-402, from the proceeds of sale of revenue bonds.

(2) (a) Any expenses incurred by the state under this chapter that are not paid from the proceeds of the liquidation of agency bonds or the issuance of state revenue bonds shall be paid from the revolving funds of the authorizing agencies.

(b) These expenses are not a charge to or an appropriation from the General Fund.

Renumbered and Amended by Chapter 382, 2008 General Session